ant who improves the common property at his own expense is entitled, in a partition suit, to compensation for the improvements, whether the co-tenant assented thereto or not. But this allowance is made, not as a matter of legal right, but merely from a desire to do justice between the parties, and hence will be so estimated as to inflict no injury on the co-tenant.

2. SUITS FOR PARTITION—*Improvements—Limitations—Personal actions for improvements—For repairs.* The right of a joint tenant to claim compensation for improvements put upon the common property at his own expense does not arise until a suit for partition is brought, and the right to partition arises whenever the parties may choose to assert it. Statutes of limitations have no application to suits for partition, nor to the equity for compensation which arises only when the partition is asked for. But the mere fact of improving the common property by a joint tenant does not raise an implied assumpsit on the part of the co-tenant to contribute to the expenses thereof, and no action therefor will lie by the tenant making the improvements. The rule is otherwise where *repairs* are made on the common property by one joint tenant at his sole expense.

SULPHUR MINES CO. v. PHENIX INSURANCE CO.—Decided at Richmond, March 18, 1897.—*Keith*, P:

1. FIRE INSNRANCE—*Policy—Conditions against encumbrances.* If a fire insurance policy contains a provision that the policy shall be void if the property be or become encumbered, unless consent thereto be endorsed on the policy by an authorized agent of the insurance company, such encumbrance unknown to the company avoids the policy, although it is not customary to make that enquiry when policies are issued to large corporations.

2. FIRE INSURANCE.—*Policy—Type in which condition printed—Objection for first time in appellate court—Case at bar.* An objection that the conditions of an insurance policy are not printed in type as large as long primer, as required by the statute, cannot be made for the first time in the appellate court. In the case at bar the company was allowed to rely on the conditions in the policy which rendered it void, and the record fails to disclose that the conditions were not printed in the type prescribed by the statute, and hence the presumption is that the policy conformed to the statutory requirement.

MOROTOCK INSURANCE COMPANY v. FOSTORIA NOVELTY COMPANY. Decided at Richmond, March 18, 1897.—*Harrison*, J:

1. FIRE INSURANCE—*Warranties.* Parties are not held to have entered into warranties unless they clearly so intended, and if a policy of insurance is so framed as to render it doubtful whether the parties intended that the exact truth of the applicant's statement shall be a condition precedent to any binding contract, that construction which imposes upon the assured the obligation of a warranty should not be favored.

2. FIRE INSURANCE—*Warranties—Burden of proof.* In an action upon a fire insurance policy the burden of proof is on the defendant to show a breach of affirmative warranties—mere statements of existing facts—by the plaintiff in his application for the insurance. It is not incumbent on the plaintiff to allege such